IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 132 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 1 - Appellant(s)
Versus
SAURASHTRA CHEMICALS - Defendant(s)

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Appearance :
MR DIPEN DESAI AGP for Appellants
MR AS SHAH for the respondent

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 21/09/2006

ORAL JUDGMENT

1. The appellant-State being aggrieved by the judgment and decree passed by the learned

Assistant Judge, Porbandar, in Regular Civil Appeal No.25 of 1985 on 30-10-85, confirming the judgment and decree dated 4-3-85, passed by the learned Civil Judge (S.D.), Porbandar, in Regular Civil Suit No.106 of 1980, is before this Court.

2. The appeal has been admitted for hearing the parties on the following substantial question of law.

> "Whether in the facts and circumstances of the case the Courts below had ignored the evidence and admission of Shri Mahendra Shah that the land of the Government was encroached upon by the respondent-plaintiff in the year 1975-76 ?"

3. The plaintiff had filed the suit submitting inter-alia that the order dated 13-6-78, passed by the Mamlatdar, Porbandar, directing forfeiture of the land which was earlier allotted in favour of the plaintiff for industrial purpose was bad in law and on facts and the order passed by the Gujarat Revenue Tribunal, dated 13-9-79, confirming the order of the Mamlatdar, Porbandar was also illegal.

4. According to the plaintiff, it had made no encroachment upon the Government property, but for protection of the land allotted to them, they had raised boundary wall and the said wall was within the area allotted to the plaintiff.

5. It appears that in the Court of Mamlatdar, some officer of the plaintiff made a submission that they had made some encroachment, relying upon the said admission, Mamlatdar ordered forfeiture and dispossession of the plaintiff. It is to be noted that Mamlatdar did not visit the spot nor appointed a surveyor nor called for spot report, but passed the final order on the alleged admission made by the plaintiff's representative.

6. The defendants appeared before the trial Court and submitted that the plaintiff did make encroachment upon the Government land and as the order passed by the Revenue Court/Revenue Tribunal was within their jurisdiction, the Civil Court could not interfere with it and in view of the admission made by the plaintiff that the plaintiff had made some encroachment, there

was no scope for the Civil Court to interfere in the matter.

7. It appears that during the pendency of the suit, a surveyor was appointed, who after visiting the spot submitted his report to the Court. According to the said report, the plaintiff did not make any encroachment on the land. Contrary to the report of the surveyor, the defendant-State could not bring anything on record except submitting that an admission was made before the Mamlatdar. The trial Court placing reliance upon the report of the surveyor and the other material available on the record decreed the suit.

8. As the appeal at the instance of the State Government proved futile, they are before this Court.

9. Learned counsel for the appellants submits that the learned Courts below have ignored the evidence available on record and the admission made by Mr. Mahendra Shah, representative of the plaintiff, that while constructing the wall, they have made some encroachment upon the

Government land. He submitted that if the said admission is unambiguous and candid, then it would bind the plaintiff. Shri Shah, counsel for the respondent, on the other hand submitted that if the plaintiff could prove that the admission made before the authority was wrong or was based on a wrong information, then they could always correct it and in the present case, the spot report shows that there is no encroachment. According to him, under the circumstances, the Courts below were justified in granting the decree in favour of the plaintiff.

10. Undisputedly a surveyor was appointed in the matter to make a survey of the spot. After visiting the spot, the surveyor reported to the Court that the plaintiff was within his premises and has not stretched himself nor has made any encroachment on the Government land. The said report was not challenged by the defendant-state nor any other evidence was brought on record to show or suggest that the report was incorrect or the report could not be relied upon. If that was

so, then the learned trial court was absolutely justified in relying upon the spot report prepared by the surveyor and the appellate Court committed no wrong in confirming the decree. As the entire material has been considered by the two Courts, I am unable to hold that the findings are perverse or call for any interference.

11. The question is answered against the interest of the appellants. The appeal deserves to and is accordingly dismissed. No costs. Let the decree be framed accordingly.

(R.S.GARG, J.)

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